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PETITION OF THE RATEPAYERS
OF THE RIVER PLACE WATER AND
WASTEWATER SYSTEMS FOR
REVIEW OF A DECISION BY THE
CITY OF AUSTIN TO CHANGE
RETAIL RATES

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BEFORE THE STATE OFFICES

OF

ADMINISTRATIVE HEARINGS

PUBLIC UTILITY COMMISSION

**COMMISSION STAFF'S RESPONSE TO THE CITY OF AUSTIN'S MOTION TO
STAY DISCOVERY**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to the City of Austin's Motion to Stay Discovery and would show the following:

I. BACKGROUND

On February 13, 2015, Staff filed its First Requests for Information to the City of Austin. On February 23, 2015, the City of Austin filed a Motion to Dismiss the Petition with prejudice pursuant to Title 16, TEX. ADMIN. CODE (16 TAC) § 22.181, alleging that the Petition does not meet the requirements of TEX. WATER CODE § 13.043 and that, consequently, the Commission lacks jurisdiction to hear the Petition. Pursuant to 16 TAC § 22.181(a)(2), the Petitioner shall file a response to a motion for dismissal of a proceeding within twenty days from the date of receipt. Staff intends to file a Response to the Motion to Dismiss within the allotted time period.

On March 3, 2015, the Commission received the City of Austin's Motion to Stay Discovery until a ruling on the Motion to Dismiss is rendered. Pursuant to 16 TAC § 22.78(a), this Response is timely filed.¹

II. NO GOOD CAUSE TO STAY DISCOVERY

Staff disagrees with the City of Austin that good cause exists to stay discovery until a ruling on the Motion to Dismiss is rendered. Pursuant to 16 TAC § 22.144(a), parties may serve written requests for information and requests for admission of fact at any time after an

¹ Five working days from the date the Motion to Stay Discovery was received by the Commission is Tuesday, March 10, 2015.

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application is filed.² Currently, responses to the Motion to Dismiss are due on March 13, 2015³ and the prehearing conference is scheduled for March 23, 2015. Staff maintains its recommendation that the Commission has jurisdiction over the petition and will file a Response to the Motion to Dismiss stating as much. Staff believes that discovery should continue in order to allow Staff the opportunity to gather and review information relating to jurisdiction prior to the prehearing conference.

Additionally, Staff believes that discovery should continue to allow Staff the opportunity to gather and review information relating to the issue of interim rates which have been requested by Petitioners.⁴

At the start of a water appeal case, in the absence of information gathered through discovery, Staff generally only has access to limited information provided in the Petition. In order to provide informed recommendations on issues that are typically at issue at the prehearing conference, such as whether the appeal has been perfected and whether interim rates should be granted, Staff must have the ability to obtain additional information from the parties. 16 TAC § 22.144(a) anticipates this need for additional information at the outset of a proceeding and allows discovery to proceed immediately.

It is Staff's concern that, should the Motion to Stay Discovery be granted and the Motion to Dismiss ultimately denied, Staff will either not receive the requested information before the prehearing conference or not have adequate time to review the requested information. As such, Staff recommends that granting the Motion to Stay Discovery will not result in judicial economy but will instead unduly burden the process should the Motion to Dismiss be denied. Therefore,

² An application is defined as a "written application, *petition*, complaint, notice of intent, appeal or other pleading that initiates a proceeding. 16 TAC § 22.2(6) (emphasis added).

³ Twenty days from the date the Motion to Dismiss was filed is Sunday, March 15, 2015. *See* 16 TAC § 22.181(a)(2).

⁴ *See* Petition of the Ratepayers of the River Place Water and Wastewater Systems for Review of a Decision by the City of Austin to Change Retail Rates at 4-5 (Dec. 22, 2015). Additionally, SOAH Order No. 1 lists interim rates as a matter to be discussed at the prehearing conference. *See* SOAH Order No. 1 at 1 (Feb. 2, 2015).

Staff respectfully requests that the Motion to Stay Discovery be denied and the City of Austin be directed to provide timely responses to Staff's First Requests for Information.

III. CONCLUSION

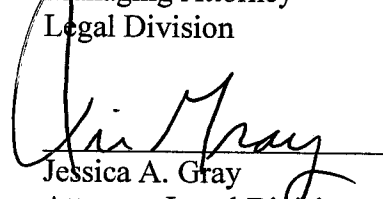
For the reasons stated above, Staff respectfully requests that the City of Austin's Motion to Stay Discovery be denied and that the City of Austin be directed to proceed with responding to Staff's Requests for Information. Staff requests the entry of an order consistent with the above recommendation.

DATE: March 10, 2015

Respectfully Submitted,

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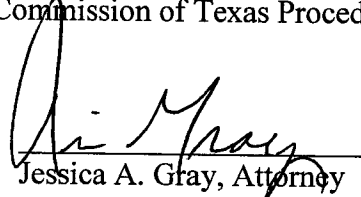
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SOAH DOCKET NO. 473-15-2123.WS
PUC DOCKET NO. 44010

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the March 10, 2015 in accordance with Public Utility Commission of Texas Procedural Rule 22.74.


Jessica A. Gray, Attorney